AN ACT

1 Establishing standards for strip searches and body cavity
2 searches; providing for conduct of strip searches and body
3 cavity searches, for reports, for civil and criminal immunity
4 and for duties of the Secretary of Corrections and the
5 Attorney General.

The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

Section 1. Legislative intent.

It is the intent of the General Assembly to establish

standards to govern the conduct of strip searches and body

cavity searches of individuals detained at or booked into local

correctional facilities. It is the further intent of the General

Assembly to restrict the practice of strip searching and body

cavity searching of individuals to those situations where such a

search may be necessary to prevent bodily harm and to ensure the

safety and security of the local correctional facility.

Section 2. Definitions.

The following words and phrases when used in this act shall

have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Body cavity search." The visual inspection or manual search of an individual's anal or vaginal cavity.

"Correctional facility." A local or county jail, prison or detention facility.

"Department." The Department of Corrections of the Commonwealth.

"Local or county jail or detention facility." A jail, prison or other such detention facility owned, operated or controlled by a borough, township, city or county.

"Medical professional." A licensed physician, licensed nurse practitioner or registered nurse.

"Secretary." The Secretary of Corrections of the Commonwealth.

"Strip search." The removal or rearrangement of an individual's clothing for the purpose of visual inspection of the individual's undergarments, buttocks, anus, genitals or breasts. The term does not include any removal or rearrangement of clothing reasonably required to render medical treatment or assistance or the removal of articles of outer clothing, such as coats, ties, belts or shoelaces.

Section 3. Strip searches and body cavity searches; restrictions.

(a) Strip searches.--An individual who has been detained or arrested for the commission of an offense other than a crime under 18 Pa.C.S. (relating to crimes and offenses) shall not be subjected to a strip search unless one of the following requirements is met:

(1) The search is authorized by a warrant or consent.

(2) The search is based on probable cause that a weapon,
controlled substance as defined under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, contraband, fruits of a crime, things otherwise criminally possessed or other things by means of which a crime has been committed will be found that constitutes a threat to the safety and security of a correctional facility and a recognized exception to the warrant requirement exists.

(3) The individual is lawfully confined in a correctional facility and the search is based on a reasonable suspicion that a weapon, controlled substance as defined under The Controlled Substance, Drug, Device and Cosmetic Act or contraband as defined by the department will be found, and the search is authorized pursuant to regulations promulgated by the secretary.

(4) There is a reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

(b) Body cavity searches.--An individual who has been detained or arrested for commission of an offense other than a crime under 18 Pa.C.S. shall not be subjected to a body cavity search unless:

(1) The search is authorized by warrant or consent.

(2) The individual is lawfully confined in a correctional facility and the search is based on a reasonable suspicion that a weapon, controlled substance as defined under The Controlled Substance, Drug, Device and Cosmetic Act or contraband as defined by the department will be found, and the search is authorized pursuant to regulations promulgated by the secretary.
(c) Existence, determination of reasonable suspicion.--In the case of a body cavity search subsequent to arrest, a reasonable suspicion shall be deemed to exist when the individual to be searched has been arrested for:

(1) An offense involving danger to the person as defined under 18 Pa.C.S.
(2) An offense involving escape, burglary or robbery.
(3) An offense involving the possession of a drug or controlled substance under The Controlled Substance, Drug, Device and Cosmetic Act.

(d) Determination of probable cause, reasonable suspicion, strip searches.--The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made after less intrusive means have been used and shall be based on a consideration of all information available and circumstances known to the law enforcement officer or other person authorizing the strip search, including, but not limited to, the following:

(1) The nature of the offense for which the individual to be searched was arrested.
(2) The prior criminal record of the individual to be searched.
(3) Whether the individual displayed physically violent behavior during or after the arrest.

Section 4. Conduct of strip searches and body cavity searches.
(a) Conduct of searches.--Any strip search or body cavity search, as well as presearch undressing and postsearch dressing, conducted pursuant to this act shall be:

(1) Performed and observed by individuals of the same sex as the detained or arrested individual.
(2) Performed at locations made private where the search cannot be observed by individuals not physically involved in conducting the search.

(3) Conducted in a manner that minimizes excessive touching of the individual being searched except as reasonably necessary to effectuate the search of the individual.

(4) Performed under sanitary conditions.

(b) Duty of individual conducting search.--In the case of a strip search or body cavity search not authorized by warrant, the law enforcement officer or other individual seeking to conduct a strip search or body cavity search shall obtain permission of the officer in charge or ranking shift supervisor, as the case may be, to conduct the search. Authorization for the body cavity search may be obtained electronically. However, such electronic authorization shall be reduced to writing by the law enforcement officer or individual seeking authorization and signed by the officer in charge or ranking shift supervisor. The law enforcement officer or other individual authorized to conduct a strip search or body cavity search shall report the reason for any such search on the record of arrest.

(c) Emergency conditions.--The requirements of this section shall not apply to circumstances where emergency conditions require immediate action to prevent bodily harm to law enforcement officers or others or to ensure the safety and security of the correctional facility except that, in all cases where a strip search is conducted as an exception to the requirements of this section, the officer conducting the search shall file a separate written report that sets forth the emergency conditions that required the immediate action. The
written report shall be filed with and reviewed by the officer in charge or shift supervisor, as the case may be, who authorized the search.

(d) Admissibility.--A violation of a provision of this section shall not affect the admissibility of evidence seized pursuant to a strip search or body cavity search.

Section 5. Civil and criminal immunity of medical professionals.

(a) Body cavity searches; specific requirement.--Whenever it is determined that a body cavity search is necessary, all such searches shall be conducted by a licensed medical professional.

(b) Requirements.--The following shall apply to any body cavity search conducted by a medical professional:

(1) A medical professional who conducts a body cavity search pursuant to the provisions of this act and in a medically accepted manner shall be immune from civil or criminal liability for such action. Such immunity from civil and criminal liability shall extend to the hospital or other medical facility on whose premises or under whose auspices the body cavity search is conducted.

(2) Any person conducting a body cavity search pursuant to this act shall, upon request, furnish to any law enforcement agency a certificate stating that the body cavity search was conducted pursuant to the requirements of this act and performed in a medically acceptable manner. The certificate shall be signed under oath before a notary public or other person empowered to administer oaths and shall be admissible in any proceeding as evidence of the statements contained therein.

(3) No individual who is the subject of a strip search
or body cavity search under this act may claim the physician and patient privilege with regard to the conducting of a body search pursuant to this act.

Section 6. Regulations.

(a) Authority to secretary.--The secretary, after consultation with the Attorney General, shall promulgate regulations to govern strip searches and body cavity searches of individuals detained in local correctional facilities. Such regulations shall give full recognition of the rights of confined individuals under the Constitution of the United States and the Constitution of Pennsylvania.

(b) Duty of Attorney General.--The Attorney General shall issue guidelines to govern the performance of strip searches and body cavity searches as he deems necessary to promote compliance with this act, the regulations promulgated by the secretary, the Constitution of the United States and the Constitution of Pennsylvania. The Attorney General may require law enforcement agencies to submit reports that provide data on all strip searches and body cavity searches conducted. The copy of the report shall be retained in the records of the law enforcement agency and shall include, but may not be limited to, the following:

(1) A copy of the written authorization required under section 4.

(2) A copy of the warrant and any other supporting documentation.

(3) The name and sex of all persons conducting or observing the search.

(4) The time, date, location and description of the search.
(5) A statement outlining the results of the search and a list of any items found and removed from the individual as a result of the search.

Section 7. Applicability.

The provisions of this act shall apply to any individual in custody at a local correctional facility, other than a person committed to incarceration by order of a court, regardless of whether an arrest warrant or other court order was issued before the person was arrested or otherwise taken into custody unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail or bond. No standard, procedure or requirement set forth in this act shall be construed to supersede any standard, procedure or requirement of State correctional institutions supervised by the secretary.

Section 8. Effective date.

This act shall take effect in 90 days.